

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

STEPHEN McCULLOM, et al.,	§	
Plaintiffs,	§	
	§	
v.	§	
	§	CIVIL ACTION NO. 3:12-CV-02037
BRAD LIVINGSTON, et al.,	§	
Defendants.	§	

**DEFENDANT UTMB'S RESPONSE TO  
PLAINTIFFS' MOTION FOR DISCOVERY SANCTIONS,  
REQUEST FOR SHOW CAUSE ORDER AND MOTION TO COMPEL**

Defendant, University of Texas Medical Branch (UTMB), urges the Court to deny Plaintiffs' Motion for Discovery Sanctions, Request for Show Cause Order, and Motion to Compel (D.E. 164 & 164-1), as the motions are without merit. UTMB has actively, and in good faith, participated in the discovery process in this case since being named a defendant in April 2013. Plaintiffs have served UTMB with multiple requests for production, admissions, and interrogatories, to which UTMB has responded with objections, responses, and responsive documents. UTMB's searches for items responsive to Plaintiffs' requests have evolved with those requests. Thus, UTMB's searches were originally narrowly tailored to the claims and allegations pertinent to McCollum, i.e., unit personnel who dealt directly with McCollum were asked for responsive documents, and have since expanded to include regional and senior administrative personnel.

Further, the recent discovery of the existence of some potentially responsive documents, such as email correspondence and meeting minutes, by UTMB, is an example of UTMB's continuing good faith effort to respond to Plaintiff's requests and meet its discovery obligations. It was not part of a calculated strategy to prejudice Plaintiffs. Immediately upon learning of the

existence of said items, UTMB disclosed the materials to Plaintiffs and has implemented a more expansive plan to preserve, compile, and produce any potentially responsive documents, which is a continuing process.

Finally, UTMB was not a party when the Rule 16(b) and 26(f) conference was ordered by the Court and held between the parties. Nonetheless, the Agreed Joint Report and Discovery Plan, filed by the parties after the conference, is devoid of any discovery plan as to electronically stored information. Though Plaintiffs and Co-Defendants failed to contemplate a discovery plan for ESI at the outset of this lawsuit, as required by Rule 26(f), UTMB has been and is continuing to identify and preserve potentially relevant ESI material.

Respectfully submitted,

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/s/KIM COOGAN  
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**ATTORNEYS FOR DEFENDANT  
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**NOTICE OF ELECTRONIC FILING**

I, KIM COOGAN, Assistant Attorney General of Texas, certify that I have electronically submitted for e-filing **Defendant UTMB's Response to Plaintiffs' Motion for Sanctions, Request for Show Cause Order and Motion to Compel** in the Northern District of Texas, Dallas Division on May 27, 2014.

/s/ KIM COOGAN  
**KIM COOGAN**  
Assistant Attorney General

**CERTIFICATE OF SERVICE**

I, KIM COOGAN, Assistant Attorney General of Texas, do hereby certify that a true and correct copy of the above and foregoing **Defendant UTMB's Response to Plaintiffs' Motion for Sanctions, Request for Show Cause Order and Motion to Compel** has been served via the Court's electronic filing system (PACER) on May 27, 2014, addressed to:

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